

REMARKS

Claims 19-40 are presently pending in the current application. In light of the following remarks, it is respectfully submitted that these claims are in condition for allowance.

Claims 19-25, 27, 31, 34-38, and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Durham (U.S. Patent No. 5,032,125) in view of Lawes (U.S. Patent No. 5,454,813).

Claim 1 recites a device for the treatment of femoral fractures comprising “an intramedullary pin having a first longitudinal axis, a proximal portion, a distal portion, and at least one transverse opening through the proximal portion of the pin, the at least one transverse opening forming an oblique angle with the first longitudinal axis and having a non-circular cross-section; a bone fixation element having a second longitudinal axis, a first end, a second end, and a shaft, the first end configured and dimensioned to engage bone in the femoral head, a sliding sleeve having a central bore, an interior surface profile, and an exterior surface profile, the central bore and interior surface profile configured to receive the shaft of the bone fixation element while permitting free rotation of the bone fixation element relative to the sleeve, and the exterior surface profile having at least a portion with a non-circular cross-section adapted to mate with the non-circular cross-section of the transverse opening, thereby prevention rotation of the sleeve with respect to the intramedullary pin; and a *locking mechanism configured and adapted to selectively lock rotation of the bone fixation element relative to the sleeve when in a first position and permit free rotation of the bone fixation element relative to the sleeve when in a second position.*”

The Examiner asserts that a compression screw 90 in the device of Durham corresponds to the locking mechanism recited in claim 19. In contrast, Durham explains that the function of compression screw 90 is “to apply a sliding compressive force to selected fractures of the

femur.” (See Durham, col. 2, ln 55-56). Durham repeatedly discloses this explanation of the function of compression screw 90. (*Id.*, col. 4, ln. 18-20, 29-32, col. 5, ln. 7-10, 35-41). Despite the numerous instances of this description in the prior art, the Examiner asserts that compression screw 90 performs the function of preventing the rotation of the lag screw with respect to the sleeve. The only method Durham discloses for preventing the rotation of lag screw 60 is the cooperation of flat surfaces 44 and 66 when lag screw 60 is slidably received in within sleeve 40. (*Id.*, col. 4, ln. 3-6). Further turning of compression screw 90 would cause threaded portion 64 to move further into the femur head causing the compression of the femur head in the direction of device 10. Durham uses this compressive force to treat fractures in the femur. Therefore, there would be no reason to modify the device of Durham to remove flat surfaces 44 and 66 because this would result in the freedom of lag screw 60 to rotate within sleeve 40. Furthermore, there would also be no reason to substitute compression screw 90 with a locking device which prevents the rotation of the bone fixation element because surfaces 44 and 66 already achieve this purpose and the function of compression screw 90 is essential to the device of Durham. The Examiner has assumed that because Durham explains that the disclosed specification in the prior art refers to the preferred embodiment of the invention then surfaces 44 and 66 are not necessary for the device to operate properly. Such an assumption is an improper use of hindsight in order to support the rejection of claim 19.

Applicants respectfully submit that Lawes does not cure the above mentioned deficiencies of Durham and that Durham and Lawes, taken alone or in any combination, do not teach or suggest “*a locking mechanism configured and adapted to selectively lock rotation of the bone fixation element relative to the sleeve when in a first position and permit free rotation of the bone fixation element relative to the sleeve when in a second position*” as recited in claim 19 and that claim 19 is therefore allowable. Because claims 20-36 depend on and therefore contain all the limitations of claim 19, it is respectfully submitted that these claims are also allowable.

Claim 37 recites limitations substantially similar to those of claim 19 including “*a locking*

mechanism configured and adapted to selectively lock rotation of the bone fixing element relative to the sleeve when in a first position and permit free rotation of the bone fixing element relative to the sleeve when in a second position.” Therefore, it is respectfully submitted that claim 37 is also allowable over Durham and Lawes for at least the same reasons previously mentioned with regard to claim 19. Because claims 38-40 depend on and therefore contain all the limitations of claim 37, it is respectfully submitted that these claims are also allowable.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Durham in view of Lawes and in further view of Bramlet (U.S. Patent No. 6,648,889). Claims 28 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Durham in view of Lawes and in further view of Fixel (U.S. Patent No. 4,432,358). Claims 30, 32, and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Durham in view of Lawes and in further view of Bresina (U.S. Patent No. 5,908,422). Claim 33 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Durham in view of Lawes in further view of Bresina and in further view of Frigg (U.S. Patent No. 6,187,007).

It is respectfully submitted that Bramlet, Fixel, Bresina, and Frigg also fail to cure the above mentioned deficiencies of Durham and that Durham, Lawes, Bramlet, Fixel, Bresina, and Frigg, taken alone or in any combinations, fail to teach the limitations of claim 19 and 37. Therefore, it is submitted that claims 19 and 37 and their dependent claims 20-36 and 38-40, respectively, are allowable over Durham, Lawes, Bramlet, Fixel, Bresina, and Frigg for at least the same reasons previously mentioned with regard to claim 19.

In light of the foregoing, Applicants respectfully submit that all of the pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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By: _____

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